



Comptroller General
of the United States

Washington, D.C. 20548

M. Spiegel

Decision

Matter of: Starwin Industries, Inc.

File: B-240203

Date: October 31, 1990

Anthony F. Staub for the protester.
Charles J. Roedersheimer, Esq., Defense Logistics Agency, for the agency.
Robert A. Spiegel, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably rejected the protester's quote on a small purchase request for quotations where the quote took exception to the conditions of the first article testing requirement.
2. Protest that the awardee offered its own part number, instead of a requested part number, in a small purchase request for quotations, is timely filed within 10 working days of the receipt of the agency report, from which the protester was first apprised of the contents of the awardee's quote, since the protest was initially filed within 10 working days of being apprised of the award, and the protester had no further duty to obtain, under the Freedom of Information Act, a copy of the awardee's quote, since this information was to be supplied with the agency report on the protest.
3. Agency may accept a quote under small purchase procedures from an approved source who identifies the part by a manufacturer's part number, as requested by the request for quotations, where this is the part number of the part previously delivered by this source.

DECISION

Starwin Industries protests the rejection of its low bid and the subsequent award of purchase order No. DLA900-90-M-PG75 to Scintrex, Ltd., under request for quotations (RFQ) No. YPE90064000926, issued by the Defense Electronics Supply Center, Defense Logistic Agency (DLA), for a stabilizer assembly (National Stock Number (NSN) 5985-01-157-2806).

We deny the protest.

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The RFQ was issued under small purchase procedures for 50 stabilizer assemblies. These assemblies are used on the Magnetic Anomaly Detection System, also known as a towed body, which is intended to detect submarines when towed through the air by helicopter. The stabilizer assembly is attached to the back of the towed body and is used to deflect air to keep the towed body aerodynamically stable while it is being towed through the air. The RFQ required first article testing for unapproved sources.

Quotes were submitted by Scintrex, an approved source, and by Starwin, that was not. Starwin's quote was \$360 per unit (no charge for first article), while Scintrex's quote was \$388 per unit. In its quote, Starwin inserted the following statement: "Magnetic Inclusion Testing IAW [in accordance with] Starwin Ind. Dwg. (63592) 507903 Rev C DTD 11-21-89 Type 3, Class 2, Group 2."1/ The contracting officer interpreted this statement as an exception to a solicitation requirement that magnetic inclusion testing be performed in accordance with Navy procedures and found Starwin's substitution of its own testing procedure to be unacceptable. Award was then made to Scintrex.

Starwin protests that its quote was improperly rejected as it never intended its statement to imply anything other than complete compliance with government specifications. We find the agency reasonably rejected Starwin's quote.

Procuring agencies are responsible for evaluating the data supplied by offerors and ascertaining if it provides sufficient information to determine the acceptability of the product in question, including the establishment of appropriate testing procedures.2/ Rotair Indus., Inc., B-219994, Dec. 18, 1985, 85-2 CPD ¶ 683. Our Office will not disturb an agency's technical determination unless it is shown to be unreasonable. East West Research, Inc., B-239619, Aug. 28, 1990, 90-2 CPD ¶ 168.

1/ Magnetic inclusion testing is a critical part of first article and acceptance testing.

2/ To the extent that the protester is complaining about testing requirements under the instant procurement or testing delays in connection with prior procurements, we find those objections to be untimely under our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(1) (1990); East West Research, Inc., B-239516, Aug. 29, 1990, 90-2 CPD ¶ 178.

In this case, Starwin did not unequivocally offer to comply with the RFQ's testing requirements,^{3/} but rather offered to test in accordance with its own drawing. The record indicates that Starwin has not successfully passed any tests on this particular stabilizer assembly under on-going contracts.^{4/} Moreover, the Navy has its own specified procedure for magnetic inclusion testing. Thus, the agency reasonably concluded that Starwin was proposing a testing procedure that may well be inconsistent with the RFQ's test requirements. The obligation to demonstrate the acceptability of an alternate product is on the offeror, an obligation that Starwin did not satisfy here when it offered different testing procedures. East-West Research, Inc., B-239619, supra.

Starwin also protests that Scintrex's offer was technically unacceptable since it quoted a part number other than the one specified in the RFQ.

DLA first argues that this allegation should be dismissed, since the protester only raised this issue in response to the agency report and could have ascertained the facts on which it bases this allegation if it had diligently pursued this element of the protest.

We disagree. Starwin protested the award on the basis that it was the low bidder within 10 working days of being apprised of the award to Scintrex; Starwin had no further duty to obtain, under the Freedom of Information Act, a copy of Scintrex's quote, since this information was to be supplied with the agency report on the protest. Starwin then supplemented its protest with this issue within 10 working days after learning the details of the awardee's quote from the agency report. Thus, this protest allegation is timely under our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(2).

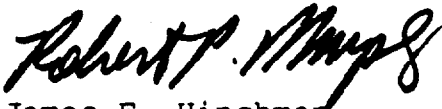
However, this protest basis has no merit. While it is true that Scintrex's quote identified its stabilizer assembly by manufacturer's part number, as requested by the RFQ, there is no indication this was not the same product as requested by the RFQ and referenced by the NSN. To the contrary, DLA

^{3/} The RFQ contained both first article and acceptance testing, both of which required magnetic inclusion testing.

^{4/} It may be that other models of Starwin stabilizer assemblies have been approved, but that is not relevant to the requirement that its unapproved assembly offered under this RFQ be subject to government specified first article testing.

states that this is the same manufacturer's part number as on assemblies previously delivered by this approved source. Many parts are identified both by NSNs and manufacturer's part numbers. Given the informal nature of small purchase procedures, we find nothing unreasonable or improper in accepting Scintrex's quote. See East West Research, Inc., B-237843, Feb. 22, 1990, 90-1 CPD ¶ 204.

The protest is denied.


for James F. Hinchman
General Counsel